

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

WILLIAM H. STEINBRINK, M.D. and)	
PATRICIA M. STEINBRINK, his wife,)	
)	
and)	
)	
BAYSIDE OBSTETRICS GYNECOLOGY)	
INFERTILITY, INC. 401(k) PROFIT)	
SHARING PLAN,)	
)	
Plaintiffs)	
)	
v.)	CASE NO. CA 01-382 - Erie
)	
ROTHSTEIN, KASS & COMPANY, P.C.;)	Filed Electronically
B. HAUPTMAN & ASSOCIATES, LLC;)	
BRUCE A. HAUPTMAN,)	
)	
Defendants)	JURY TRIAL DEMANDED

**REPLY TO MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED
COMPLAINT FILED BY ROTHSTEIN, KASS & COMPANY, P.C.**

AND NOW, comes the above-named plaintiffs, WILLIAM H. STEINBRINK, M.D.,
PATRICIA A. STEINBRINK and BAYSIDE OBSTETRICS GYNECOLOGY INFERTILITY,
INC. 401(k) PROFIT SHARING PLAN, by their attorneys and respectfully file the following
Reply to Rothstein, Kass & Company's Motion to Dismiss Plaintiffs' Second Amended
Complaint and state in support thereof the following:

POINT I

1. It is admitted that plaintiffs filed an Amended Complaint on October 1, 2006 and a Second Amended Complaint on October 16, 2006. Those Complaints speak for themselves.

2. Admitted.

3. Denied. The plaintiffs were in fact clients of the defendant Rothstein, Kass & Company. There was contractual privity as well as a duty of care in existence.

WHEREFORE, plaintiffs respectfully request that the Court dismiss Rothstein, Kass & Company's Point I.

POINT II

MOTION TO DISMISS NEGLIGENT MISREPRESENTATION CLAIMS

4. Admitted.

5. Denied. Rothstein, Kass & Company had a duty to plaintiffs such as would support a negligent misrepresentation claim.

WHEREFORE, the plaintiffs respectfully request this Court to dismiss Rothstein, Kass & Company's Point II.

POINT IV

MOTION TO DISMISS FOR FAILURE TO COMPLY WITH F.R.C.P. 9(b)

9. Admitted. By way of further answer, Count XI raising a claim of intentional misrepresentation has been dismissed.

10. Denied. Plaintiffs' claim of negligent misrepresentation is pled pursuant to the provisions of F.R.C.P. 8. Negligent misrepresentation does not provide for a fraud element. As such, the provisions of Rule 9(b) do not apply.

WHEREFORE, the plaintiffs respectfully request this Court to dismiss Rothstein Kass & Company's Point IV.

Respectfully submitted,

AMBROSE, FRIEDMAN and WEICHLER

s/ Leonard G. Ambrose III

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